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CHAMPERTY AND MAINTENANCE - VALIDITY OF CONTINGENT FEE - CONTRACTS BY LAYMEN TO PROSECUTE AND COLLECT CLAIMS AGAINST THE GOVERNMENT

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COMMENTS

CHAMPERTY AND MAINTENANCE — VALIDITY OF CONTINGENT FEE — CONTRACTS BY LAYMEN TO PROSECUTE AND COLLECT CLAIMS AGAINST THE GOVERNMENT — It has often been said by the American courts in recent years that the doctrine of champerty, due to changes in the law of assignment of choses in action and other changes of conditions from those prevailing in England at the time of the origin of the doctrine, is no longer applicable in all its stringency.[1] That conditions have changed cannot be denied; however, neither can it be denied that

[1] Huber v. Johnson, 68 Minn. 74, 70 N. W. 806 (1897); Wardman v. Leopold, (D. C. App. 1936) 85 F. (2d) 277; Manning v. Sprague, 148 Mass. 18, 18 N. E. 673 (1888). California, New Jersey, Mississippi, and Texas have apparently repudiated entirely the champerty idea. 4 L. R. A. 113 (1889). Michigan is said to have abolished the common-law rules of champerty by virtue of statutes. Mich. Comp. Laws (1929), §§ 14010, 13600; Lehman v. Detroit G. H. & M. R. R., 180 Mich. 362, 147 N. W. 628 (1914). The same is said of Idaho. 3 Idaho Code (1932), § 3-205; Merchants' Protective Assn. v. Jacobsen, 22 Idaho 636, 127 P. 315 (1912). It was said there is no champerty in Arizona. Strahan v. Haynes, 33 Ariz. 128, 262 P. 995 (1928). The common law of champerty is not in force in Connecticut in regard to civil actions. Sleeping Giant Park Assn. v. Connecticut Quarries Co., 115 Conn. 70, 160 A. 291 (1932).

champerty is a very live doctrine today.[2] The real basis for the doctrine of champerty is that certain contracts are contrary to public policy.[3] When we realize this, we see that our ideas of public policy may change, and undoubtedly have changed, yet this change does not mean the end of the doctrine of champerty, but merely that the qualifications for its application have changed.[4] The courts which say that the doctrine of champerty no longer applies because of changed conditions are thereby showing their misunderstanding of the true basis of the doctrine.[5]

In the process of definition certain elements or requisites were laid down by the early courts as being necessary before any contract could be held to be champertous.[6] These requisites were strictly and rigidly adhered to by the early courts and, lacking any one of them,

[2] For its application in a very recent case, see Merlaud v. Nat. Met. Bk. of Wash., D. C., (D. C. App. 1936) 84 F. (2d) 238. Also see heading "Champerty and Maintenance" in the Current Digest for 1935 and 1936.

[3] "The general purpose of the law against champerty and maintenance was to prevent officious intermeddlers from stirring up strife and contention by vexatious or speculative litigation which would disturb the peace of society, lead to corrupt practices, and pervert the remedial process of the law. The principle on which it proceeded was that contracts conducive of such results were against public policy." Huber v. Johnson, 68 Minn. 74 at 78, 70 N. W. 806 (1897). See Radin, "Maintenance by Champerty," 24 CAL. L. REV. 48 (1935); 45 YALE L. J. 731 (1936); 14 BOSTON UNIV. L. REV. 421 (1934).

[4] In Huber v. Johnson, 68 Minn. 74 at 79, 70 N. W. 806 (1897), the court states that changes in the law of assignment and other conditions have emasculated the common-law rules of champerty and made the early English statutes inapplicable, then says,

> "We do not think that any court, even of those who hold that these statutes are not in force, has ever gone so far as to hold that contracts may not so manifestly tend to stir up strife and contention and vexatious and speculative litigation, and prevent the amicable compromise of claims between citizens, as to be void on grounds of public policy."

[5] As an example of a court which has forgotten the true basis of the doctrine of champerty and has indulged in pure conceptual thinking, see Merchants' Protective Assn. v. Jacobsen, 22 Idaho 636, 127 P. 315 (1912), where, in the syllabus of the court, it is said,

> "The common law rule of champerty and maintenance is not in force in this state and . . . the measure and mode of compensation of attorneys is left to the agreement, express or implied, entered into between the attorney and client, so long as such agreement, *is not contrary to good morals or sound public policy*, it will be enforced by the courts." [Italics added.]

How may the doctrine of champerty be better expressed than by the italicized words?

[6] In general a champertous contract was a contract (1) to handle *litigation*; (2) for a share of the proceeds if successful but nothing to be received if unsuccessful; (3) to bear all costs without reimbursement whether successful or not. Graustein v. J. Mannos & Sons, 287 Mass. 304, 191 N. E. 438 (1934); Holdsworth v. Healey, 249 Mass. 436, 144 N. E. 386 (1924); Hadlock v. Brooks, 178 Mass. 425, 59 N. E. 1009 (1900); 6 A. L. R. 184 (1920); 11 C. J. 243 (1917).

there could be no champerty. In general, these requisites were but a concrete expression of what was deemed to be the public policy of the times. The modern courts, however, have emphasized the strict requirements of the definition of champerty without regard for its true basis in public policy. It was not long before these courts were confronted with cases where all the requisites of a champertous contract, as defined, were present, but yet it seemed unfair[7] to hold the contract invalid due to our changed attitudes and changed rules of law. So these courts said that the doctrine of champerty was no longer applicable in all its rigor, or was no longer applicable at all.[8] Thus the courts became so involved in the technical application of a strict definition that they entirely lost sight of the underlying principles; they piled up distinction on top of distinction until the definition meant nothing. It would be better for the modern courts to forget hollow definitions and extricate themselves from the maze of technical thinking by getting back to the true basis for the doctrine of champerty.[9]

[7] Many of these cases were very hard because they presented a situation where the defendant who was hard pressed asked an attorney to aid him in enforcing a claim against someone. Then when the defendant had won and had a large sum of money in his hands he got greedy and wished to keep it all, so he claimed champerty when sued on the contract with the attorney. It seems best to declare all contracts of this sort bad in order to stop vexatious and worthless suits and to prevent soliciting by the attorney. Then if the defendant actually has solicited the attorney and the attorney has rendered services in good faith, the attorney should be able to recover in quasi-contractual action for the value of his services. This will give the attorney what he deserves for his work and protect the defendant from exorbitant fees. For attorney's recovery for services under a void or champertous contract, see 3 IOWA L. BULL. 43 (1917); 16 COL. L. REV. 517 (1916); and 6 MINN. L. REV. 238 (1922).

[8] Supra, notes 3 and 5. One of the sources of confusion in the cases is the failure to distinguish between champerty as a crime, and champerty as a defense to a civil action on a contract. See Rees v. De Bernardy, [1896] 2 Ch. 437; Sprye v. Porter, 7 El. & Bl. 58, 119 Eng. Rep. 1169 (1856).

[9] Perhaps the most logical approach of all would be to refuse to lay down any general rules at all, but to judge each case as it arises and thus see whether that particular contract has evil tendencies and is contrary to public policy. This brings the doctrine of champerty down to its basic principle and would amply protect the champertous client who is being sued on the contract for a share of the proceeds. Such a rule is suggested by Radin in "Maintenance by Champerty," 24 CAL. L. REV. 48 (1935); and in 45 YALE L. J. 731 (1936). However, such a rule would promote litigation because every contingent fee contract would have to be sued on before the parties could be sure whether that particular contract was valid or invalid. So it seems that there must be some rules of law laid down whereby the parties can know at the time of contracting whether they are within the law. The whole purpose of the doctrine of champerty is to *prevent* certain types of contracts from ever being entered into because these contracts lead to vexatious and worthless suits of the "blackmail" type. Thus, for the sake of certainty there must be a certain amount of definition and general rules, but these should not be so worshipped and become so fixed as to cause the courts to lose all touch with the underlying principles. As our ideas of

Champerty is merely a word used to describe certain types of contractual transactions which are deemed contrary to public policy and which also come within the prohibitions of the larger field labeled maintenance.[10] At one time or another every court in this country has felt it necessary to express its own ideas as to what is the real policy behind the doctrine of maintenance and champerty and to give what the court feels is the true definition thereof.[11] This is an additional reason why attempting to decide any of the problems in this field solely by the use of definitions is most unsatisfactory. Even though the use of definitions to some degree is necessary for the purposes of precedent and understanding,[12] these definitions should always be used merely as tools to aid in the task of shaping public policy. Definitions should not be worshipped, as many courts are prone to do, as the finished products or final expressions of the law in themselves. Thus, the courts should use definitions of champerty and maintenance always with an eye toward the underlying considerations of public policy which must be the final bases for the courts' holdings.

The mischief which the old law aimed to correct and which still should be prevented by the modern law of champerty and maintenance is aptly described as "the traffic of merchandizing in quarrels, of huckstering in litigious discord." The digesters, annotators, and compilers of the law do not all agree as to just what contracts[13] may be

public policy in this field change, so should we change our general rules and definitions rather than trying blindly to hang on to our old rules and definitions until we are forced to desert them.

[10] Champerty is a species of maintenance. Radin, "Maintenance by Champerty," 24 CAL. L. REV. 48 (1935); 11 C. J. 243 (1917); 5 R. C. L. 269 (1914).

[11] In general, the best definition is also the broadest definition because a broad definition leaves the most room for interpretation on the basis of what policy really demands. Fair samples of the numerous definitions are: "At best, it may be stated that maintenance now means the act of one improperly, and for the purpose of stirring up litigation and strife, encouraging others either to bring actions or to make defenses which they have no right to make, and the term seems to be confined to the intermeddling in a suit of a stranger or of one not having any privity or concern in the subject matter, or standing in no relation of duty to the suitor." 5 R. C. L. 269 (1914). "Any contract which in its nature tends to increase litigation, multiply contentions or unsettle the peace and quiet of a community or set one neighbor against another or give one litigant an advantage over another or induce witnesses or parties to resort to perjury or subornation of perjury or to the commission of any other crime or offense against the laws of the Commonwealth is champertous and void and is therefore against public policy." Wilhoit's Admx. v. Richardson, 193 Ky. 559 at 563, 236 S. W. 1025 (1921). Practically, this latter definition amounts merely to a broad statement of public policy and is thus to be commended.

[12] Supra, note 9.

[13] In this comment it is only intended to consider champerty and maintenance as related to contract rights. Some of the acts condemned as champerty or maintenance may be done with or without any previous agreement and be grounds for criminal

labeled champertous or tainted with maintenance.[14] It would seem that any contract, contrary to public policy, which, because of the intent of the parties making it or because of its inherent nature, is likely to create or affect a lawsuit or any other hearing wherein the rights of parties are determined, should be included within the doctrine of champerty and maintenance.[15] It is true that the strict definition of

prosecution (which is almost unheard of today) or disbarment (if the actor is an attorney). Criminal prosecution and disbarment, though, are not considered here.

[14] The cases may be found listed under "Attorney and Client," "Attorney at Law," "Champerty and Maintenance," "Contracts," "Illegal Contracts," etc., with no accord as to what belongs where.

[15] There are many types of contracts held contrary to public policy by the courts (labeled champertous by some courts, by other courts not so labeled) which seem to present fact situations where the doctrine of champerty and maintenance is applicable. A partial list with some illustrative cases follows. (1) *Contingent fee contracts within the strict definition of champerty*: Watkins v. Sedberry, 261 U. S. 571, 43 S. Ct. 411 (1923); Judy & Gilbert v. Atchison, T. & S. F. Ry., 111 Kan. 46, 205 P. 1116 (1922); Baca v. Padilla, 26 N. M. 223, 190 P. 730, 11 A. L. R. 1188 (1920); 83 Am. St. Rep. 159 at 173 (1902), and other cases cited in other notes herein. (2) *Purchase of litigious rights with intent to sue thereon*: Roberts v. Yancey, 94 Ky. 243, 21 S. W. 1047 (1893); Brown v. Ginn, 66 Ohio St. 316, 64 N. E. 123 (1902); State v. Nix, 135 La. 811, 66 So. 230 (1914) (statutory); Gowen v. New Orleans Naval Stores Co., 157 Ga. 107, 120 S. E. 776 (1923). (3) *Purchase of client's claim during suit*: Elmore v. Johnson, 143 Ill. 513, 32 N. E. 413 (1892); Hudson v. Sheafe, 41 S. D. 475, 171 N. W. 320 (1919); 4 A. L. R. 173 (1919). (4) *Conveyance and mortgage of property held in adverse possession*: Davis v. Manhard, 172 Okla. 85, 45 P. (2d) 1095 (1935); Findley v. Hardwick, 230 Ala. 197, 160 So. 336 (1935); 35 L. R. A. (N. S.) 729 (1912). The cases are very numerous. See 11 C. J. 254 (1917). (5) *Contracts or terms in contracts restricting or prohibiting the settlement of suits out of court*: In re Snyder, 190 N. Y. 66, 82 N. E. 742, 14 L. R. A. (N. S.) 1101 (1907); Kauffman v. Phillips, 154 Iowa 542, 134 N. W. 575 (1912); Greenleaf v. Minnesota, St. P. & S. S. M. Ry., 30 N. D. 112, 151 N. W. 879 (1915); Nichols v. Waters, 201 Mich. 27, 167 N. W. 1 (1918) (note that in Michigan the common law of champerty is said to be abolished, supra, note 1); Purvis v. United States, (C. C. A. 8th, 1932) 61 F. (2d) 992. (6) *Contracts to secure divorce for a share in the settlement or alimony recovered*: McConnell v. McConnell, 98 Ark. 193, 136 S. W. 931, 33 L. R. A. (N. S.) 1074 (1911); Young v. Young, 196 Mich. 316, 162 N. W. 993 (1917); Hare v. McGue, 178 Cal. 740, 174 P. 663, L. R. A. 1918F 1099 (1918); Opperud v. Bussey, 172 Okla. 625, 46 P. (2d) 319 (1935). (7) *Contracts to pay for the solicitation of suits and contracts secured by solicitation*: Chreste v. Louisville Ry., 167 Ky. 75, 180 S. W. 49 (1915), 173 Ky. 486, 191 S. W. 265 (1917); Johnson v. Great Northern Ry., 128 Minn. 365, 151 N. W. 125 (1915) (held not champerty); Brown v. Durham, 175 Okla. 500, 53 P. (2d) 551 (1936); 73 A. L. R. 401 (1931); 86 A. L. R. 195 (1933); 86 A. L. R. 517 (1933). (8) *Contracts to quash criminal prosecution, or to contest the probate of wills, or to otherwise obstruct the administration of justice*: Weber v. Shay, 56 Ohio St. 116, 46 N. E. 377 (1897); Cochran v. Zachery, 137 Iowa 585, 115 N. W. 486, 16 L. R. A. (N. S.) 235 (1908); Jones v. Henderson, 189 Ky. 412, 225 S. W. 34 (1920); Wells v. Floody, 155 Minn. 126, 192 N. W. 939 (1923); 83 Am. St. Rep. 159 at 182 (1902). Contracts to use influence on the judge or jury

champerty[16] is clearly not so broad as to include all of these contracts, but the reasons of policy behind the strict definition are easily broad enough to cover all contracts of such a nature. In fact, if prohibitory words are added to the beginning of the above statement, it would express, in general terms, the reasons of public policy underlying the doctrine of champerty and maintenance. By merely describing our present day ideas of public policy, we have effectively defined[17] what should be the modern law of champerty and maintenance, just as the old strict definition of champerty and maintenance, so often berated by the courts, described the ideas of public policy at the time of Blackstone, Chitty, and Coke. Therefore, we submit that the remedy is not to throw over the entire doctrine of champerty and maintenance as obsolete and outmoded, but rather it is to redefine it on the basis of our modern conception of public policy, thus making the doctrine the useful legal tool it can so easily be.

In a large group of cases an exception to the general doctrine of champerty has been laid down which says that contingent fee contracts to secure payment by the government of claims against it are not champertous.[18] The latest expression of this exception is the case of *Wardman v. Leopold.*[19] In this case Leopold and his partner, appellees, tax specialists, had made a contract with Wardman, appellant, whereby they agreed to secure a refund to Wardman on the amount paid by him for his 1921 income taxes. As compensation the appellees

to secure a certain result would be included here, but a suit on such a contract is quite unlikely and the shrewd corrupter would demand his pay in advance. (9) *Contracts to suppress or furnish evidence, payment to be contingent on recovery*: Goodrich v. Tenney, 144 Ill. 422, 33 N. E. 44, 19 L. R. A. 371 (1893); Barngrover v. Pettigrew, 128 Iowa 533, 104 N. W. 904, 2 L. R. A. (N. S.) 260 (1905); Duteau v. Dresbach, 113 Wash. 545, 194 P. 547, 16 A. L. R. 1430 (1920); Keown & McEvoy v. Verlin, 253 Mass. 374, 149 N. E. 115, 41 A. L. R. 1319 (1925). Included in this category would also be contracts to trump-up injury cases, or to provide suitable injuries for recovery of damages. This category is closely related to subornation of perjury but here we consider the civil rather than the criminal aspects of it. (10) *Contracts to "lobby" or procure beneficial legislation or action of a public officer, payment to be contingent on success*: Kaufman v. Catzen, 81 W. Va. 1, 94 S. E. 388 (1917); Herrick v. Barzee, 96 Ore. 357, 190 P. 141 (1920); Trist v. Child, 21 Wall. (88 U. S.) 441, 22 L. Ed. 623 (1874); Gesellschaft Für Drahtlose Telegraphie M.B.H. v. Brown, 64 D. C. App. 357, 78 F. (2d) 410 (1935); Chambers v. Coates, 176 Okla. 416, 55 P. (2d) 986 (1936); 29 A. L. R. 157 at 173 (1924); 67 A. L. R. 684 at 689 (1930).

[16] Supra, note 6.

[17] Thus as the reasons of policy change so should the definitions of champerty and maintenance change, and there will not then be any need for the exceptions and the distinctions which now confuse us.

[18] This exception does not include contracts to secure legislation, however, but only contracts to sue in the Court of Claims or secure tax refunds, etc.

[19] (D. C. App. 1936) 85 F. (2d) 277, 106 A. L. R. 1487.

were to receive one-third of the total refund they might secure, but if unsuccessful appellees were to receive nothing. Also, appellees were to incur all expenses without reimbursement from appellant. The appellees brought suit to impress an equitable lien on the fund recovered by them and were successful. Appellant appealed, claiming that the contract was champertous. The court held that this contract was not to conduct litigation in the ordinary sense but to recover a claim from the government and hence was not champertous. It should be noted that the facts in this case satisfy even the strictest definition of champerty,[20] except that Wardman's claim was to be prosecuted before administrative tribunals rather than before courts of law. But without any consideration of public policy, the court merely said there is no champerty because the definition of champerty is not fully complied with by the facts in this case.

As judicial authority for its position in the *Wardman* case, the District of Columbia Court of Appeals cites a group of federal[21] and Massachusetts[22] cases beginning with *Stanton v. Embrey*[23] decided in 1876. In the *Stanton* case the only authority given by the court for the statement that contracts to recover claims against the government are not within the doctrine of champerty is *Wright v. Tebbitts*[24] and *Wylie v. Coxe*.[25] In the *Wylie* case, upon which the *Wright* case is based, a contract for five per cent of the recovery on a claim arising from the Mexican War was allowed. However, the question of champerty and illegality was never mentioned in the opinion of the Court and the question in the case was whether there was a contract at all. Nowhere in this case, or in any of the later cases, is any reason given for the exception in regard to governmental claims except the technical terms of the definition of champerty and some general words to the effect that times have changed. This is a very slim basis for a

[20] Supra, note 6. There is a less strict definition of champerty which does not require that the attorney pay all costs without reimbursement, but which is otherwise the same as the definition set out in note 6.

[21] Stanton v. Embrey, 93 U. S. 548, 23 L. Ed. 983 (1877); Taylor v. Bemiss, 110 U. S. 42, 3 S. Ct. 441 (1883). Additional cases not cited by the court are: McPherson v. Cox, 96 U. S. 404, 24 L. Ed. 746 (1878); In re Paschal, 10 Wall. (77 U. S.) 483, 19 L. Ed. 992 (1871); Central R. & B. Co. v. Pettus, 113 U. S. 116, 5 S. Ct. 387 (1885); Wright v. Tebbitts, 91 U. S. 252, 23 L. Ed. 320 (1876). This last case contains the first clear expression of the governmental claims exception to the doctrine of champerty but gives no reasons for it.

[22] Manning v. Sprague, 148 Mass. 18, 18 N. E. 673 (1888). Also see Joy v. Metcalf, 161 Mass. 514, 37 N. E. 671 (1894); and Manning v. Perkins, 85 Me. 172, 26 A. 1015 (1892); 4 L. R. A. 113 (1889); Vandergrift & Co. v. Lanyon Zinc Co., 87 Kan. 376, 124 P. 534 (1912).

[23] 93 U. S. 548, 23 L. Ed. 983 (1876).

[24] 91 U. S. 252, 23 L. Ed. 320 (1876).

[25] 15 How. (56 U. S.) 415, 14 L. Ed. 301 (1853).

rule which, due to the ever increasing number of administrative hearings and due to the ever increasing number and complexity of taxes, may be controlling in a large number of cases.[26]

It seems much better to apply general considerations of public policy as we now recognize them to these government cases and not to attempt to stick by the technical terms of a legal definition compounded in former times. Congress, which has the last word under our system as to what is public policy, has not felt that the rule laid down in the *Wylie* and *Wright* and other cases is ample protection for the government or for the person who owns a claim against the government.[27] Thus in *Calhoun v. Massie*,[28] Justice Brandeis says:

> "While recognizing the common need for the services of agents and attorneys in presentation of such claims and that parties would often be denied the opportunity of securing such services if contingent fees were prohibited, Congress has manifested its belief that the causes which give rise to laws against champerty and maintenance are persistent. By the enactment, from time to time, of laws prohibiting the assignment of claims and placing limitations upon the fees properly chargeable for services Congress has sought both to prevent the stirring up of unjust claims against the Government and to reduce the temptation to adopt improper methods of prosecution which contracts for large fees contingent upon success have sometimes been supposed to encourage. . . ."

It seems that once we forget about old definitions, the mere fact that a certain contract involves, on the one hand, litigation in a court, or, on the other hand, a hearing and argument before an administrative tribunal should be immaterial.[29] If the contract is of the type which is contrary to public policy when litigation is involved, it should also be bad when an administrative hearing is involved. This is especially

[26] It is important to remember that, due to the principle of governmental immunity, the government can very seldom be haled into a court and sued directly; so, as strictly defined, champerty will almost never be applicable to claims against the government. Yet it seems that the government should be as protected from vexatious and worthless claims as is a private person, particularly in regard to the exercise of the taxing power.

[27] In Ball v. Halsell, 161 U. S. 72, 16 S. Ct. 554 (1895), the Court cites the Wylie and Wright cases and the others, stating the result of their holdings, and says that because of these cases when Congress gave the Indian claims to the Court of Claims it expressly limited the fees an attorney could recover by the terms of the Indian Depredations Claims Act of 1891. 26 Stat. L. 851, 854.

[28] 253 U. S. 170 at 173-174, 40 S. Ct. 474 (1920). There was a dissent of four justices on the basis of a previous case.

[29] Jones v. Blacklidge, 9 Kan. 562 (1872); Coquillard's Admr. v. Bearss, 21 Ind. 479 (1863).

true when we realize how similar these hearings are to actions at law or suits in equity.[30] In the *Wardman* case, discussed previously, the appellees, tax specialists, hired an attorney to aid them in collecting the appellant's refund and they carried the claim up through the Court of Appeals of the District of Columbia. In almost all the acts setting up administrative tribunals there are provisions for appeals to the courts. So it seems rather clear that the distinction in the *Wardman* case and the previous cases between litigation in court and a hearing before an administrative tribunal is not very reasonable.

In conclusion, therefore, it is submitted that if the courts wish to adhere to the old strict definition of champerty, they should hold that hearings on tax claims and other claims against the government are so nearly judicial functions as to be litigation as contemplated by the definition of champerty. Incidentally, this would also mean that attorneys would be necessary in the handling of these claims from the very beginning, a requirement which would make for better and clearer records on appeal to the courts from the administrative tribunals.[31] On the other hand, if the courts wish to redefine champerty in the light of modern conceptions of public policy, they should recognize that there is as much public policy in preventing exorbitant fees for collecting claims against the government and in preventing harassing of the government[32] as there is in regard to litigation among private persons.

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[30] Old Colony Trust Co. v. Comr. of Internal Revenue, 279 U. S. 716, 49 S. Ct. 499 (1929), however, holds that the Board of Tax Appeals is not a court.

[31] In Wardman v. Leopold, (D. C. App. 1936) 85 F. (2d) 277, the appellees were laymen but the court made no mention of this nor was this the basis for the decision in the case. It is true, though, that the fact that laymen can appear before the administrative tribunals often causes much trouble when the case goes to a court on appeal where, of course, only attorneys can appear. So merely recognizing that hearings before many of the administrative tribunals are in reality judicial in nature could serve the double purpose of making the doctrine of champerty available, and of limiting appearance before these tribunals to attorneys only. On the general question of champerty by laymen, see Ann. Cas. 1918A 797, which indicates that laymen are treated much the same as attorneys so far as champerty is concerned. Merlaud v. Nat. Met. Bank of Wash., D. C., (D. C. App. 1936) 84 F. (2d) 238, is a case where a layman was held to have made a champertous contract.

[32] Due to the recent growth in numbers and activity of administrative tribunals, this need is very apparent today. Perhaps this can only be accomplished by legislation as by provisions in the acts setting up the various administrative tribunals whereby attorney's fees are limited or regulated by the tribunal. This has been done in many workmen's compensation acts. But it would be better if the courts themselves were to redefine the doctrine of champerty, because in many cases contingent fee contracts are necessary. The courts could preserve the use of contingent fee contracts by judicial rules much more easily than their use could be preserved by statutes, which, of necessity, must be rather rigid and inflexible.